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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 000502

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SUBJECT: TURKEY'S TOP COURTS IN THE THICK OF POLITICS

REF: A. ANKARA 213

[B](#). ANKARA 448

[C](#). 07 ANKARA 1112

Classified By: Political Counselor Janice G. Weiner, for Reasons 1.4 (b ,d)

[1](#). (C) SUMMARY. As the power struggle continues between forces of change and the status quo, Turkey's top courts are playing an increasingly prominent role as de facto opposition. This prominence is in part a predictable outgrowth of the cases brought before them -- and underscores GOT determination to reform the judiciary. Legal authorities and opposition politicians alike identify the courts as the foremost pillar against what they fear is Turkey's Islamization. END SUMMARY.

[2](#). (C) Since the military was chastened in the aftermath of the April 2007 "e-coup," another strongly Kemalist Turkish institution has come to the fore as defender of the Atatürkist state: the judiciary (ref A). In recent statements and rulings, Turkey's top judges and prosecutors have been acting more like an opposition than the real opposition, offering opinions and providing their version of checks and balances on PM Erdogan's Justice and Development Party (AKP) government.

[3](#). (SBU) At a Bar Association conference in early March, the chief prosecutor of Turkey's highest administrative court (Danistay), Tansel Colasan, praised the 1960 coup -- "It would be wrong to regard May 27 as a military coup. Indeed it was a revolution" -- and defended the execution of then-Prime Minister Menderes. Some circles are clearly happy with her remarks; others are not. GOT spokesman Cemil Cicek responded, "It is inappropriate for the judiciary to approve of an extrajudicial act. Whoever looks for a solution in this country should search for it within the law." Colasan has been widely criticized throughout the media for her political comments; Cengiz Candar questioned to what extent the Turkish judiciary abided by the laws. AKP Vice Chairman Dengir Mir Mehmet Firat told us that, as a citizen of Turkey, he was ashamed of Colasan's words. A criminal complaint has been filed against her; Suleyman Soylu, head of the Democrat Party, invited her resignation.

[4](#). (C) Firat, a lawyer, also pointed to a recent Danistay ruling on compulsory religion classes (ref B) and described it as an instance of that court exceeding the bounds of its

jurisdiction. Because the mandate for the classes stems from the 1982 constitution, this was a judgment that should have been left to the Constitutional Court, or given to parliament to amend. Not all agree with him - the EU mission's legal expert argues that the Danistay was on solid ground. The timing of the Danistay's conclusion, however, plays directly into the current political struggle and gives the appearance of a purely administrative court reining in the AKP. (The constitutional provision was taken under military oversight after the 1980 coup.)

¶5. (SBU) The Danistay also this week invalidated a circular sent by High Education Council (YOK) president Yusuf Ziya Ozcan, instructing university rectors to permit students wearing headscarves to attend classes or risk prosecution. A handful of Turkey's universities had allowed the headscarf on campus in the past few weeks. This ruling prompted some to reverse policy. The Danistay concluded that Ozcan's instruction was not "based in the law," despite recent constitutional amendments, signed by the president and intended to pave the way for equal education rights for all -- including those who wear headscarves. This has paved the path for a criminal case against Ozcan; a criminal complaint will be delivered to the Ministry of Education and from there to the Danistay for investigation.

¶6. (C) In May 2007, it was the Constitutional Court itself that delivered the controversial ruling which required a 367 parliamentary quorum, derailing the presidential election and forcing early general elections (which returned AKP to power with a greater majority than it had enjoyed earlier).

¶7. (C) Opposition members of parliament tell us the courts,

ANKARA 00000502 002 OF 002

including the Constitutional Court, the Danistay, the High Court of Appeals (Yargitay), and High Court of Accounts (Sayistay), are the foremost defense against AKP's alleged Islamist agenda (followed by the military and the universities). They argue the courts are a necessary tool to bolster a weak and divided opposition that alone is not able to counter what they view as AKP's exploitation of its legislative majority to undermine Turkish democracy and law and bring Turkey closer to an Islamic state. "The high courts are more political than they are legal," explained one MP, citing the fact that some judges at the highest level do not have a background on the bench, but rather are ex-governors or prosecutors.

¶8. (C) COMMENT. Outspoken judicial officials are nothing new in Turkey, where the judiciary -- much like the military -- openly claims its role is to defend the secularist Republic (refs B and C). A few opposition politicians, self-conscious about the courts' politicization, argue the United States has no experience in the fundamentally transformative forces of Islam. The next big anticipated court decision is the Constitutional Court's ruling, expected in the next few days or weeks, on the so-called headscarf amendments to constitutional articles 10 and 42. The opposition's consistent resort to other state institutions -- in this case, the courts -- to curb GOT actions shows how wedded it is to the status quo, how much it fears and how little it understands the evolution Turkey is undergoing, how much it distrusts the people, and how great the need is here for a viable political opposition. END COMMENT.

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